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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,716	03/22/2004	Robert Tod Dimpsey	AUS920040060US1	5962
35525	7590	11/16/2007		
IBM CORP (YA) C/O YEE & ASSOCIATES PC P.O. BOX 802333 DALLAS, TX 75380			EXAMINER NGUYEN, PHILLIP H	
			ART UNIT 2191	PAPER NUMBER
			MAIL DATE 11/16/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/808,716

Applicant(s)

DIMPSEY ET AL.

Examiner

Phillip H. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 7-10 and 16-19 is/are rejected.
- 7) ☒ Claim(s) 2-6, 11-15 and 20-24 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This action is in response to the amendment filed 10/3/2007.
2. Claims 1-24 remain pending and have been considered below.

#### ***Response to Amendment***

3. The rejection to claims 2, 5, 11, 14, 15, 20, 23 and 24 under 35 U.S.C. 103(a) is withdrawn in view of Applicants' amendment to disqualified the prior art as a 103(a) reference.

#### ***Allowable Subject Matter***

4. Claims 2-6, 11-15 and 20-24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

5. Applicant's arguments with respect to claims 1-24 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1, 7-10 and 16-19 rejected under 35 U.S.C. 102(e) as being anticipated by DeWitt, JR et al. (United States Patent Application Publication No.: US 2005/0071817 A1).

As per claims 1, 10 and 19:

DeWitt discloses an method in a data processing system for presenting coverage data for code, the method comprising:

- obtaining the coverage data containing instruction access indicators associated with the code, wherein each instruction access indicator is associated with a different portion of the code, and wherein each instruction access indicator is initialize as being unset prior to execution of its associated code portion (see at least paragraph [00179] "**performance indicators are associated with the identified call and return instructions. The program is executed and data is collected from the performance monitor unit**");
- identifying instruction access indicator that have been set by a processor in the data processing system in response to execution of the code by the processor to form set instruction access indicators (see at least paragraph [0075] "**determines that an instruction associated with an indicator is**

- present, a signal is sent to indicate that a marked instruction is being executed* – the indicator has been set to indicate the instruction is being executed), wherein each set instruction access indicator is associated with an executed portion of code (see at least paragraph [0075] ***“a mark instruction is an instruction associated with a performance indicator”***); and
- generating a presentation for the coverage data (see at least paragraph [0180] ***“generate a data structure, such as trees to track and present information regarding the execution of the program”***), wherein each set instruction access indicator is identified in the presentation (***information regarding the execution of the program including set instruction access indicators and unset instruction access indicators***)

As per claims 7 and 16:

DeWitt discloses the method as in claim 1 above; and further discloses:

- wherein the portion of the code is a single instruction in the code (see at least paragraph [0089] ***“an instruction in the bundle is identified”***) and wherein every instruction in the code is associated with a different instruction access indicator (see at least paragraph [0072] ***“a spare field may be used to hold an indicator that identifies the instruction”*** – every instruction associates with a different indicator).

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As per claims 8 and 17:

DeWitt discloses the method as in claim 1 above; and further discloses:

- wherein the portion of the code is a subroutine in the code (see at least paragraph [0085] "***subroutine 600 includes a number of instructions in which instructions 602, 604, and 606 are associated with performance indicators***").

As per claims 9 and 18:

DeWitt discloses the method as in claim 1 above; and further discloses:

- wherein the portion of the code is a branch instruction in the code (see at least paragraph [0187] "***all branch instructions would be flagged for counting***").

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1, 7-10 and 16-19 rejected under 35 U.S.C. 102(e) as being anticipated by Callahan, II et al. (United States Patent Application Publication No.: US 2002/0129339 A1).

As per claims 1, 10 and 19:

Callahan discloses:

- obtaining the coverage data containing instruction access indicators associated with the code, wherein each instruction access indicator is associated with a different portion of the code, and wherein each instruction access indicator is initialize as being unset prior to execution of its associated code portion (see at least **FIG. 4B "Execution Trace Information File"** – *each indicator (data value) in the Execution Trace Information File must be initialized as unset prior to execution of the executable code in order to capture the correct data*);
- identifying instruction access indicator that have been set by a processor in the data processing system in response to execution of the code by the processor to form set instruction access indicators, wherein each set instruction access indicator is associated with an executed portion of code (see at least FIG. 4B **"Execution Trace Information File"** – *contains a set or a plurality of indicators (data values)*); and
- generating a presentation for the coverage data, wherein each set instruction access indicator is identified in the presentation (see at least **FIG. 5A-5C**).

***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phillip H. Nguyen whose telephone number is (571) 270-1070. The examiner can normally be reached on Monday - Thursday 10:00 AM - 3:00 PM EST.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wei Y. Zhen can be reached on (571) 272-3708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PN  
11/10/2007



MARY STEELMAN  
PRIMARY EXAMINER